

EXECUTIVE CHAMBERS

HONOLULU

April 30, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2003

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2003, entitled "A Bill for an Act Relating to the Illegal Use of Controlled Substances."

The purpose of this bill is to implement the recommendations of the Joint House-Senate Task Force on Ice and Drug Abatement that was created to address the epidemic proportion of crystal methamphetamine ("ice") use in Hawaii. This omnibus measure contains provisions that meet this purpose. However, it also contains provisions that would exacerbate the problem of "ice" abuse in Hawaii.

Favorable provisions of this bill include increasing the prison sentence for those who manufacture drugs in the presence of a child, amendments to the drug paraphernalia law that would make it easier for law enforcement officials to prosecute these cases, and amendments that provide the Hawaii Paroling Authority with discretion in determining whether parole should be revoked for violations involving illegal drugs. In addition, the bill partially restores sentencing judges' discretion to impose a jail sentence with regard to certain drug convictions. The bill also addresses the need for substance abuse treatment by mandating parity in health insurance plans allowing substance abuse to be treated like other medical conditions.

Although these provisions are a step in the right direction, they are unfortunately outweighed by other egregious provisions. For example, there are provisions in this bill that would actually reduce the penalty for manufacturing "ice" and make the penalty for manufacturing small quantities of "ice" less than the penalty for manufacturing small quantities of other dangerous drugs. As "ice" manufacturing is a more serious problem in Hawaii than the manufacture of other dangerous drugs, this change in the law would be particularly inappropriate. Currently, manufacturing less than one-eighth of an ounce of methamphetamine is a class A felony with a mandatory minimum term of not less than ten years during which time the convicted person is not eligible for parole. Under this bill, that crime is reduced to a class B felony with a mandatory minimum term of only three years. Moreover, manufacturing that same quantity of any other dangerous drug remains a class A felony. Thus, if this bill were enacted into law, manufacturing small amounts of every dangerous drug except "ice" would be a class A felony. This would not represent good public policy.

Furthermore, the bill even reduces the mandatory minimum sentence for manufacturing large quantities of "ice" from ten years with no possibility of parole to a sentence of five years. This is unacceptable. This is also inconsistent with one of the avowed purposes of the bill: to "deter the proliferation of drug trafficking" with regard to "ice." If we are to successfully intervene in the availability of "ice," these provisions should not be allowed to become law.

This bill is also objectionable because it overturns the Hawaii Supreme Court's decision (State of

Hawaii v. Smith, 103 Haw. 228, 81 P.2d 408 (2003)) that requires drug users with multiple felony convictions to be sent to jail. To the contrary, this bill provides drug users with multiple felony convictions the possibility of not serving even one day in jail. This is a matter of poor public policy, because other criminals with multiple prior offenses would be given a mandatory prison sentence.

Other objections to this bill include its disregard of the counties' home rule. As currently drafted, the bill infringes upon the zoning powers of the counties by exempting drug rehabilitation homes from land use ordinances that establish guidelines for these homes. The bill provides that, with regard to any drug rehabilitation home accommodating up to ten persons, "no conditional use, permit, variance, or special exception shall be required for a residence used as a drug rehabilitation home." The bill also provides that such a drug rehabilitation home "shall be considered a residential use of property and shall be a permitted use in residentially designated zones including . . . zones for single-family dwellings" (emphases added). There is no provision that allows homeowners and residents any procedure to challenge a decision to place a drug rehabilitation home in their neighborhoods.

This bill also amends the zero tolerance in public schools law by mandating that students caught, for example, selling drugs be assessed for treatment and given treatment, if needed, rather than being suspended from school (except for a possible ten-day "crisis suspension"). The provision ties the hands of the Department of Education in disciplining students who possess, sell, or use drugs. Furthermore, the Department may be unable to implement the proposed revision, because not all schools have certified

substance abuse treatment counselors on staff and because there may well be an inadequate number of programs to which students can be referred.

Further, the provisions, as written, would result in two students who have engaged in exactly the same behavior to be punished differently. A student who sells drugs who DOES NOT need drug treatment is still subject to the "zero tolerance policy." However, a student who sells drugs who DOES need drug treatment is NOT subject to the "zero tolerance policy." In fact, the student with the drug problem is better off for disciplinary purposes than the student without the drug problem, because the bill states that "the child shall not be excluded from school and all disciplinary action shall be deferred" (emphasis added). The bill further provides that upon completion of the treatment program, all records of disciplinary action relating to the original offense shall be expunged. We should not enact legislation that, in effect, tells our children that being addicted to drugs is an effective way to avoid discipline or maintain a clean disciplinary record.

Moreover, we should not say that a student who deals large quantities of drugs, for example, cannot be suspended just because the student needs treatment. And, the provision appears to bar the zero tolerance policy even for a student who is caught selling drugs a second or third time.

House Bill No. 2003, in short, is a collection of provisions that are internally inconsistent, result in conflicting outcomes, and are, in some instances, inconsistent with good public policy. There are certain laudable provisions in the bill. I would hope they could be

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reenacted without those provisions that are steps backward rather than forward.

For the foregoing reasons, I am returning House Bill No. 2003 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii